

KRAPF HOMES, LLC,)
)
Plaintiff,)
)
v.) Civil Action No. 07L-06-080 WCC
)
CLIFTON L. SYKES AND)
LISA SYKES,)
)
Defendants.)

CARPENTER, J.

On this 30th day of June 2009, upon consideration of Dilip Modi's (the "Movant") Motion to Set Aside Sheriff's Sale, it appears to the Court that:

1. On August 10, 2005, Clifton and Lisa Sykes (the "Debtors") filed for Chapter 13 bankruptcy in the Delaware Bankruptcy Court. Shortly thereafter, in November of 2005, the Bankruptcy Court confirmed the Debtors' plan of reorganization. In June of 2007, Krapf Homes, LLC ("Krapf") filed a Complaint and Statement of Claim for Mechanic's Lien against the Debtors' property which related back to September 16, 2006, the date Krapf began working on the Debtors' property. Krapf amended its Statement of Claim in January of 2008.

2. When the Debtors failed to satisfy the lien, Krapf foreclosed on the property. The Sheriff advertised the sale of the Debtors' property in December of 2008 and the property was sold at a sheriff's sale on December 8, 2008. The sheriff's sale notice did not include the name of the creditor seeking the foreclosure or the reason for the sale. The Movant was the successful bidder on the property at the sheriff's sale, but was not aware that the Debtors were in bankruptcy or that the property was subject to Krapf's lien. The Movant researched the title to the property at the New Castle

County Recorder of Deeds and contends that the sole recorded encumbrance was a single mortgage to EMC Mortgage.

3. It is well-settled in Delaware that the Superior Court has broad discretion to confirm or set aside a sheriff's sale.¹ However, courts "may not arbitrarily or capriciously refuse to confirm a sale, where there are no irregularities in the sale proceedings and no fraud, unfairness, or other extraneous matter demonstrating unfairness to one of the interested parties is shown."² A number of factors may influence a court's decision to set aside a sale, including inadequacy of price, "[f]raud, mistake, accident, impropriety, misconduct, surprise or irregularity in the sale process."³

4. When an individual files a bankruptcy petition, that filing automatically stays any claims against the individual or their property.⁴ Included in the litany of acts that the stay prohibits is "any act to create, perfect, or enforce any lien against property of the estate."⁵ This would

¹*Burge v. Fidelity Bond & Mortgage Co.*, 648 A.2d 414, 420 (Del. 1994) (citing 2 *Woolley's Delaware Practice* § 1108).

²*Id.* (citing 59 C.J.S. *Mortgages* § 744(2)(a)).

³*Id.*

⁴11 U.S.C. § 362(a) (2009).

⁵11 U.S.C. § 362(a)(4).

include the institution of a foreclosure to enforce a mechanic's lien, as occurred in this case. The issue here is whether the Debtors' home was property of the estate at the time of the foreclosure and subsequent sheriff's sale. There is a split of authority amongst several circuits on the issue of the existence of the Chapter 13 bankruptcy estate post-confirmation; there is no authority on this question in the Third Circuit.⁶ Courts take one of three positions on this issue: (1) "plan confirmation terminates the bankruptcy estate thereby freeing postpetition creditors from the automatic stay"; (2) "all property of the debtor, including property acquired postconfirmation, remains property of the estate after confirmation and therefore subject to the protection of the automatic stay"; or (3) "upon confirmation, only property that is necessary to implement the plan remains property of the estate and continues to enjoy the protections of the automatic stay."⁷

⁶See Russell G. Donaldson, Annotation, *Continued Existence of Bankruptcy Code Chapter 13 Estate After Confirmation of the Chapter 13 Plan*, 126 A.L.R. Fed. 665 (1995) (explaining that some courts conclude that the bankruptcy estate terminates upon confirmation of the plan, while other courts would hold that confirmation does not automatically eliminate the estate); *see also In re Weisel*, 2009 WL 311101, at *11, n.10 (Bankr. W.D. Pa. Feb. 9, 2009).

⁷*In re Weisel*, 2009 WL 311101, at *11, n.10 (explaining the different positions and concluding that "no definitive guidance exists in the Third Circuit on this particular point.").

5. The Movant argues that the sale should be set aside because Krapf's mechanic's lien encumbers the property. Unbeknownst to the Movant, he purchased the property subject to this lien, and thus he claims he will lose the \$3,700 he has paid to date and the remaining \$37,000 that he bid for the property if the Court confirms the sale. Because the Debtors were in bankruptcy, the Movant contends, the foreclosure and subsequent sheriff's sale instituted by Krapf violated the automatic stay set in place by 11 U.S.C. § 362(a).⁸

6. In support of its argument, the Movant cited at the hearing a Virginia case explaining the split of authority on whether an estate exists after the confirmation of a Chapter 13 plan.⁹ That court held that the estate must continue to exist post-confirmation otherwise "there would be nothing for the trustee to collect or disburse."¹⁰ That case also holds that the estate must remain in effect after the confirmation of the plan because it will hold

⁸See 11 U.S.C. § 103(a) (2009) (stating that "chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title," thereby indicating that the automatic stay provision of 11 U.S.C. § 362(a) applies to Chapter 13 cases).

⁹*Montclair Prop. Owners Assoc. v. Reynard (In re Reynard)*, 250 B.R. 241, 245 (Bankr. E.D. Va. 2000).

¹⁰*Id.* at 246.

all post-confirmation earnings and assets to be paid out to creditors.¹¹ Virginia authority, however, is not binding within this jurisdiction, and thus, this case merely serves as persuasive authority and illustrates the position that Virginia has taken on the issue.

7. Krapf argues that the Bankruptcy Court's confirmation of the plan caused title to the property to revert in the Debtors.¹² Krapf cites a District of Delaware case involving a Chapter 11 bankruptcy estate that stated: "The court recognizes that the confirmation of a plan of reorganization reverts the property of the estate in the reorganized debtor and that, as a result, the bankruptcy estate no longer exists."¹³ Indeed, the statutory sections setting forth the effect of confirmation on the estate in Chapter 11 and Chapter 13 cases are identical in stating that confirmation reverts the property in the debtor.¹⁴ However, caselaw indicates that the issue of the survival of the bankruptcy estate post-confirmation is more

¹¹*Id.*

¹²See Pl.'s Ex. B, ¶ 3; *see also* 11 U.S.C. § 1327(b) (stating "Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.").

¹³*NVF Co. v. New Castle County*, 276 B.R. 340, 348 (D. Del. 2002) (citing 11 U.S.C. § 1141(b)).

¹⁴See 11 U.S.C. §§ 1141(b), 1327(b).

settled with respect to Chapter 11 cases, than in Chapter 13 cases.¹⁵ Thus, it is unclear how the Delaware Bankruptcy Court or the Third Circuit would rule on this issue in a Chapter 13 case.

8. Due to the split of authority on the issue of whether the bankruptcy estate exists post-confirmation in a Chapter 13 case, the Court finds that the only appropriate manner of resolving this issue is to grant the Movant's Motion and to allow the parties to litigate the issue in the Bankruptcy Court. This is an issue more appropriately within their jurisdiction and would have greater precedential value if the issue is decided in that venue. As such, for the limited purposes of this case only, the Court finds the bankruptcy automatic stay would prevent the creditor's foreclosure action without relief being granted by the Bankruptcy Court. Since that relief was not sought by the creditors, the Sheriff sale is voided and any further action regarding this property should first seek relief and clarification in the Bankruptcy Court of this issue before seeking foreclosure.

¹⁵*Id.*; see also *In re Fairfield Cmty's, Inc.*, 142 F.3d 1093, 1095 (8th Cir. 1998) (explaining that in Chapter 11 cases, "Generally, once a bankruptcy debtor's reorganization plan has been confirmed . . . 'the estate of the debtor and thus the bankruptcy court's jurisdiction, ceases to exist.'"); *In re Resorts Int'l, Inc.*, 372 F.3d 154, 165 (3d Cir. 2004) (citing *NVF Co.*, 276 B.R. at 348 and the language of 11 U.S.C. § 1141(b)).

9. For the reasons set forth above, the Movant's Motion is hereby
GRANTED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.